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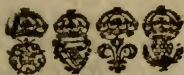
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THE
CORDIAL
OF

Judge Jenkins

For the good People
of L O N D O N.

In reply to a thing, called
An Answer to the poy-
sonous seditious Paper of
Mr. DAVID JENKINS;
by H. P. Barrister of
Lincolns-Inne.



Printed in the Yeare, 1648.

CORDIAL
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Judge Jenkins

For the good People
of LONDON.

In reply to a thing, called

An Answer to the boy-

lish seditious Paper of

MR. DAVID JENKINS;

by H. P. BARNETT of

Lincoln-Inn.



Printed in the Year, 1678.

The Cordiall of Judge
J E N K I N S, for the
good people of
L O N D O N.

AFTER the said Mr. H. P. hath
made a recitall of the heads of
my *Vindication*, he deduced his An-
swer unto these eight particulars,
which follow verbatim.

It cannot be denied, but the *Parlia-*
ment sits by the *Kings* Writ, nay if Sta-
ture Law be greater than the *Kings*
Writ, it cannot be denied but the *Par-*
lia. sits, or ought to sit by something
greater than the *Kings* writ: & if it be
confessed that the *Parl.* sits by the *Kings*
writ, but do not act by the *Kings* writ,
then it must follow that the *Parlia.* is
a voyd vaine Court, and sits to no pur-
pose; nay it must also follow, that the
Parl. is of lesse authority, and of lesse use
than any other inferiour Court, for as
much as it is not in the *Kings* power to

controule other Courts, or pre-
vent them from sitting or acting.

This is a *gros non sequitur*, the power is in himselfe. Ergo, it is not rived to, nor does it slide virtually in Parliament. For the light of the remains imbodied, & unexhausted the Glob of the Sun, at the same time as it is diffused and displayed thro all the body of the aire; and what not that the King, without emptying himselfe, gives Commissions daily Oyre and Terminer to others, which himselfe can neither frustrate nor elude but for my part I conceive it is a great error to infer that the Parliament is only the Kings power, because it is the Kings power in it; for it seeme to me, that the Parliament does both and act by concurrent power, devolved both from the King and Kingdom and in this some things are more obvious and apparent than in others. by what power does the Parliament grant Subsidies to the King? if not by the power which the King gives then the King may take Subsidies without any grant from the Parliament: as if it be so by a power which the people give to the Parliament, then it will

now, the Parliament hath a power given both by King and Kingdom.

3.

The sending Propositions to the King and desiring his concurrence, is scarce worth an Answer: for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseem a Superiour to prefer suit to an inferiour for matters in themselves due. God himself hath not utterly disdained to beseech his own miserable, impious, unworthy creatures: besides, 'tis not our Tenet, that the King hath no power, because he hath not all power, nor that the King cannot at all promote our happiness, because he hath no just claime to procure our ruine.

4.

We affirm not that the Kings power is separated from his person, so as the two *Spencers* affirmed, neither do we from conclusions out of that separation as the two *Spencers* did, either that the King may be removed for misdemeanours, or performed *per asperit*: or that the Subject is bound to govern in ayd of him: we only say, that his power is distinguishable from his person.

person, and when he himselfe make distinction betwixt them, commanding *one thing* by his legall Writ Courts and Officers, and commanding *another thing* extrajudicially by word of mouth, Letters, or Ministers we are to obey his Power rather than his Person.

5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him *quomodo*: For if the King pardon him which hath murdered my Son, his pardon shall not cut me off from my appeal; and 'tis more unreasonable, than the Kings pardon should make a whole State which hath suffered remediless than any private man. So if the King should deny indemnity to those which in the furie of warre have done things unjustifiable by the Lawes of peace and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And his will not hold, yet this is no good consequence, the King is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies

quencies, thereof it hath no power
in other matters.

The Parliament hath declared the
King to be in no condition to govern:
but this must not be interpreted rigid-
ly, and without distinction; for if the
King with his Sword drawn in his
hand, and pursuing the Parliament
and their Adherents as Rebels, bee
not fit for all Acts of Government,
yet it is not hereby intimated that he
is divested of the habit or right of Go-
verning: If he be unqualified now, he
may not be unqualified for the future; if he
may not doe things destructive to the
Parliament, he is not barred from re-
turning to the Parliament, or doing
justice to the Parliament. This is a
ivolous cavil, and *subterfuge*.

We swear, that the King is our su-
reme Governour over all persons,
and in all causes; but we do not swear
that he is above all Law, nor above the
affection of his people, which is the end
of the Law, and indeed *Paramount*
to the Law it selfe. If he be above
Law, or liable to no restraint of our
Laws, then wee are no freer than the

French

French or the *Turkes*, and If he be above the prime end of Law, *comm* safety, then we are not free as the *French* or *Turkes*. For if the total subversion of the *French* or *Turke* were attempted, they might by Gods Law be imprinted in the book of Nature, justify a selfe defence; but we must needlesly perish, when the King pleads to command our throats. Besides, he hath achieved the King of *England* such Supremacy above all Law and community it selfe, for whose behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend to, then to what purpose serves our Lawes, nay, what purpose serves the Lawes of other Countries? for by this general donation, all Nations are condemned to all servitude as well as we. If the Law of this Land be appealed, what Bookes hath Mr. *Jenkins* read, where hath he found out that *Lex Regia*, whereby the people of *England* have given away from themselves right in themselves? Some of our Bookes tell us, that we are more free than the *French*; that the King cannot oppresse us in our Persons or states, by imprisonment, denyi

just

justice : or laying Taxes without our
consents. Other Bookes tell us, that
the safety of the people is the supream
Law, and that the King hath both
God and the Law for his Superiour.
But all this is nothing to learned Mr.
Jenkins,

8

We admit, that no Acts of Parlia-
ment are compleat, or formally bind-
ing, without the Kings assent : yet
this is still to be denyed, that there-
fore without this assent particularly
express, the two Houses can doe no-
thing, nor have any virtuall power at
all, no, not to examine Mr. *Jenkins*,
nor to doe any other thing of like na-
ture, though in order to publicke
justice and safety. I have done, and
with M. *Jenkins* would call in and lick
up againe his black infamous execrable
reproaches, so filthily vomited out
against the Parliament.

To the first.

I Was examined by a Committee
appointed by the House of Com-
mons : I say, and said that the
House of Commons have no power
to examine me, for that it is no
Court ; every Court hath power to

exa-

examine upon Oath ; this power the House of Commons never claimed. The Court of *Pye powders*, court-*Baron*, *Hundred court*, *County court* and every other Court of Record, or not of Record hath power to examine upon Oath, and an examination without Oath is a communication only : examination in Law is upon Oath.

3 H. 4 c. 3
3 H. 6. 45
19 H. 6. 43
35 H. 6. 5

Sir Anthony
Maynes
ca'c.
Cook 1 par.
Reports.
Lit. 2. lib.
Sect. 194.6
H 4. I

There is no court without a power of tryall ; the House of Commons have no power to try any offence, nor ever practised it by Bill, Indictment, Information, Complaint, or Original Writ, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon oath, without which there can be no condemnation or judgement : and that which can attain to no reasonable end, the Law rejects as a thing *inutile* and uselesse. *Sapientia incipit a fine.*

6 pars instit
fol 4. & 9

The writ whereby they are called gives them power, *Ad faciendum & consensientum* : To what ? To such things *Quae ibidem de communi consilio ordinari convingerint (viz.)* in the Parliament, This makes nothing at all for a Court for the House of Commons : that *consilium* which that Writ intends, is cleared partly by the Writ for

chusing Knights, &c. For the King
that Writ is said to resolve to con-
tend and treat with the Prelates and
Peers of the Kingdome, for and
touching the great concernments of
the Common-wealth (for the King
ever sits in the House of Commons:)
and this also is made evident by the
Writs to the Prelates, Peers, Judges,
and to his Counsell at Law : The
words in the Writ are, *To appeare and
attend the Parliament, Consilium imper-
ri the one doth consulerre, the other
cetera & consentire.*

The House of Lords, where the
King sits in persons, assisted by His
Lords, Judges, Serjeants, Atturney,
Solicitor, Masters of the Chancery,
a Court of Record to many purposes,
it do vne in the Bookes of Law, and
the Statutes of the Land, and that Court
only in the House of Lords, where
the King sits.

A Court must either be by the
Kings Patent, Statute Law, or by the
Common Law, which is common and
constant usage: the House of Com-
mons hath no Patent to bee a Court,
nor Statute Law to bee a Court, nor
common usage: they have no Jour-
nall Booke, but since *Edward, 6.* time,
as there ever Fine by the House of
Com-

7 H. 6. 28
1 H. 7 30
13 Ed. 3. c. 5
4 pars inf.
p. 11.

Plowd
Com. 319

Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot do the lesse, cannot doe the greater.

25 E. 3. c. 4.
3 Car. Petition of
Right.

It is ordained, that no man shall be imprisoned, or put out of his Franchise by the King or his Councell but upon indictment or presentment of his good and lawfull Neighbour where the deed is done, or by originall Writ at the Common Law, and so is *Lex terræ* the Law of the Land mentioned in *Magna Charta*, cap. 29 expounded, and the said *Magna Charta*, and *Charta de Forreſta*, are declared by the Statute of 25 E. 1. c. 1. to be the Common Law of the Land. And Judges and Commissioners are to proceed *Secundum legem, & consuetudinem Regni Angliæ*, as appears by the proceedings in all Courts, and by the Commissions: and therefore the House of Commons by themselves proceeding not by Indictment, Presentment or Originall Writ, have no power to imprison men, or put them out of Franchise.

4 *Part inſtit.*
2. 1.
3 *Part inſtit.*
2. 23.

This no way trenches upon the Parliament; for it is in Law that the Parliament without King and both Houses; I have onely in my Paper

delivered to Mr. Corbet, applied my
 self to that Committee, that had not
 power to examine me, but, I never
 thought, said, or wrote, that the Par-
 liament had no power to examine me.
 The Law and custome of this Land is
 that a Parliament hath power over my
 life, liberty, lands and goods, and
 over every other Subject, but the
 House of Commons of it selfe hath no
 such power.

For the Lord Cookes relation, that
 the House of Commons have imposed
 fines, and imprisoned men in Queene
 Elizabeths time, and since; Few facts
 of late time never questioned, make
 no power nor Court; *à facto ad jus*
 is no good argument; for the words
 of the Statute of 6 Hen. 8. cap. 16
 that a licence to depart from the House
 of Commons for any Member there-
 of, is to be entred of Record into the
 Booke of the Clarke of the Parlia-
 ment, appointed, or to be appointed
 for that House, doth not conclude that
 the House of Commons is a Court of
 Records.

For first, that Law of 6 H. 8. c. 26.
 handles no such question, as that,
 whether the House of Commons be a
 Court; it is a maxime in all Lawes,
Lex aliud irascens nil probat, the word

12 H. 7. 20

Princes case

8 Pars

Cook.

1 Pars insti.

P. 159

14 H. 8. 3

Dier 28.

H. 8. 60

1 pars insti.

19. b.

4 P. Inst. c.
Parl.Hobbar's re-
ports fol. 152Hobbar's re-
ports, fol. 154.

(Re-

(Record) there mentioned, is onely Memoriall of what was done and entered in a book: A plaint removed out of the County-Court to the Court of the common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the county court is no court of Record: and so for ancient Demesne in a Writ of false judgement, the words are *Recordari facias laquelam, &c.* and yet the court of ancient Demesne, is no court of Record; and so of a court Baron the Law and custome of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custome.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a Delinquent (*Rege dissentiente*) the KING contradicting it under his Great Seale. *Mitchell*, and others lately were condemned by the prosecution of the House of Commons in King *James* his time; did King *James* ever contradict it? And so in ancient times, where the House of Peere condemned the Lord *Latimer* in 50 E. 3. The Kings pardon freed him which shewes clearly, that the Kings expresse or implied assent must of necessity

OF 7. H. 8.

25. 20. 17. 4

21. 7. 8

21. 7. 8

21. 7. 8

21. 7. 8

Fitz. Nat.

Br. 70

Fitz. Nat.

Br. 13.

12 H. 4. 33.

34 H. 6. 49.

34 H. 6. 49.

34 H. 6. 49.

34 H. 6. 49.

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34 H. 6. 49.

34 H. 6. 49.

34 H. 6. 49.

ity be had to make a Delinquent,
the execution of the sentence is in
the Kings name.

The Gentl. saith, *That the Parlia-
ment sit, or ought to sit by something
other than the Kings Writ, &c.*

No Parliament did ever sit without
the Kings Writ, nor could ever Par-
liament begin without the Kings pre-
sence in Person, or by a Guardian of
England by Patent under the Kings
Great Seale, the King being *in reme-
dy*, or by Commission under the
Great Seale to certaine Lords repre-
senting the Kings person, and it hath
been thus in all Ages unto this Ses-
sion of Parliament, wherein his Ma-
jesty hath been pressed, and hath pas-
sed two Acts of Parliament, one for a
bienniall Parliament, and another
for a perpetuall, if the Houses please,
to satisfie their desires; how these two
Acts agree one with another, and with
the Statute in *Edw.* the thirds time,
where Parliaments are ordained to be
holden every yeare, and what mis-
chiefes to the people of this Land
such length of Parliaments will pro-
duce by protections and priviledges to
them and their meniall servants
from all debts during their lives, if
they please to continue it so long, and
how

4 p. inst.
p. 4 & 6

4 E. 3. 14.

36. E. 3

c. 10

21 12c. the

Act of Limi-

tation of

Actions,

c. 22.

how destructive to mens actions gainst them, by reason of the Stat of Limitations, which confines the actions to certain yeares, and in other inconveniences of greater portance, is easie to understand.

4 p. inst.
p. 14
Vow and
Covenant,
p. 11.

How can any man affirme, that two Houses of Parliament do now by the Kings Writ, which relate to counsel and treatie with the King concerning the King, the defence of his Kingdom and of the Church of England, these are three points which it tends to, as appeares by the Writ. They keep their King prisoner at *Holmby*, and will not suffer him to consult and treat with them. They have made a Vow and Covenant to assist the Forces raised and continued by both Houses against the Forces raised by the King without their consent and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the King's Kingdom? or their kingdom?

3 pars
Cook Dean
and Chap-
ter of Nor-
wich.

When by their solempne League and Covenant they extirpate Bishops, Deanes and Chapters root & branch. Is this to defend the Church of England? (that Church must necessarily be meant, that was the Church of England when the said Writ bore to

they were not summoned to defend a Church that was not in being, to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controul other Courts of Justice, or prevent them from sitting, or acting, and therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Lawes. The Houses make no Court without the King, they are no Bodie corporate without the King, nor Parliament without the King, they all make one corporate Bodie, one Court called the Parliament, whereof the King is the Head, and the Court is in the Lords Houle, where the King is present: and as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all, and they themselves by levying War against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroguing this Parliament of no effect, by the said Acts of their own:

they

14 H. 8. 3.
36 H. 8. 2.
Dier 60.
4 p. inst.
p. 1.

they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby he may discern what Bills are fit to pass and what not, which in all ages the Kings of this Land have enjoyed their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

27 H. 8. c. 24

28 H. 8. 11

Dier.

3 R. 3. 11

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings patent or Writ: otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them: the whole and sole power of making Judges belongs to the King: the King cannot controule or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges, but the judges of the Houses. In his other Courts, the King commits his power to his Judges by his patent, and they are sworne to do common right to all men, and the King is sworne not to let them from doing, the King cannot judge in those Courts, nor controule, but the King is both Judge and Controuler in the Court of Parliament: *Quod Act* for his assent or dissent doth give life

death to all Bills. Many Lawyers
 have much to answer to God, this
 Kingdom, and to posterity, for puz-
 zling the people of this Land with such
 fancies, as the Gentleman who wrote
 the Answer to my Paper, and others
 have published in these Troubles,
 which have been none of the least cau-
 ses of the raising and continuing of
 them. And so I have done with the
 first part of this Answer.

A D. 2.

For the *Non sequitur*, in the second
 section of the Gentl. Answer, the
 Antecedent and the Consequent are
 his owne.

(*libellus :*
Quem recitas meus est (O Fidentine !)
Sed male dum recitas incipit esse tuus

My words are, that the King is not
 virtually in the two Houses at West-
 minster, to enable them to grant par-
 dons, for that whole and sole power
 by the Law belongs to the King : My
 Paper hath no such thing, as that the
 Kings power cannot be derived to o-
 thers, or the virtue of his power : For
 his power and the virtue of his power,
 in all Patents to his Judges, in
 charters to Corporations, in Com-
 mission

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern and imprison him, and usurp to themselves all Royall Authority, as the two Houses now do, no reasonable man can affirme that they Act by the power of their Prisoner, who has no power to give them, that by force of Armes take all power unto themselves.

The Gentl. saith, *The King grants Commissions dayly of Oyre and Terminer, which he cannot frustrate nor revoke. The King may revoke and discharge the Commission by his Writ as he may remove all Judges, and place other men in their room; and any Kings death determines all the Judges Patents at Westminster Hall Commission of Oyre and Terminer, &c.* And so he might dissolve both Houses in all times, by his Writ under the Great Seal, until that in this Parliament, by his own concessions, the King of his goodnesse had included himselfe; which goodnesse hath been full all requited.

4 E. 4. 39.

5 E. 4. 4.

1 Eliz. Dier.

165.

1 Mar.

Brooks case

447.

The Gentl. affirms, *That the power*
the Parliament hath is concurrent from
the King and Kingdom; which, he
 conceives is proved by the grant 4 pars inf.
 of Subsidies to the King by the Parlia- pag.
 ment. The mistaking of this word
Parliament! hath been mischievous
 in these times to this Land, and it is
 affectedly mistaken, which makes the
 in the greater, for the two Houses are
 not the Parliament, as before is de-
 clared, and at this time so to inculcate
 it; when all men know, that of the
 20. Peers of this Kingdome, who
 were temporall Peers before the Trou-
 bles; there are now not above 30. in
 the Lords House, and in the House of
 Commons about 200. of the princi-
 pall Gentlemen of the Kingdom left
 the House and adhered to his Majesty,
 who is imprisoned by them, shewes no
 such candor as is to be desired.

It is true, that no Tallage can be
 laid upon the people of this Land but
 by their consent in Parliament, as ap-
 peareth by the Lawes mentioned in
 the Margent; but you shall finde in
 M. Seldens learned Book, called *Mare*
clausum, a number of presidents in
 Henry the thirds time for Ship-mony
 justly condemned this Parliament, to
 the which his Majesty assented; and in
 truth

25 E. 1. *Con-*
firmitio
chartarum
 c. 6
 34 E. 1. c. 1
de Tallagio
non conce-
dendo.

truth that Ship-money was condem-
 ned before by the said two Statutes
 25 E. 1. & 34 E. 1. *de Tallagio non con-*
cedendo. Dangelet, Englishly, and man-
 grievous Burthens were laid upon the
 people, and born, untill that memor-
 ble Princes time. But I am of opinion
 that the Common Law of the Land
 did alwaies restraine Kings from a
 Subsidies and Tallages, but by consen-
 t in Parliament; which doth appeare by
Magna Charta the last chapter, where
 the Prelates, Lords, and Commun-
 ty gave the King the fifteenth part
 of their moveables. In truth it is in
 manner of consequence, because the
 King cannot take what he pleaseth
 to the Subjects good, that therefore they
 have a concurrent power in Parlia-
 ment: there have been many Parlia-
 ments and no Subsidies granted, Par-
 liaments may be without Subsidies
 but Subsidies cannot be without Par-
 liaments: of ancient times Parlia-
 ments rarely granted any, unlesse
 were in the time of forreigne Warres
 and in my time, Queené *Elizab.* refu-
 sed a Subsidie granted in Parliamen-
 t and in the Parliament of 1 *Jac.* none
 were granted. The Gentl. should
 make a conscience of blinding
 the people with such untrue co-
 lour

ers to the ruine of the King and
ople.

AD. 3.

The Gentl. affirms, That the *sex-*
ing propositions to the King, and de-
ng his concurrence, is scarce worth an
swer; for Subjects may humbly petiti-
for that which is their strict right
property, &c. The propositions sent
Newcastle, are in print; wherein
the two Houses are so farre from
humbly petitioning, that they stile
themselves his Majesties Sub-
jects, as appears by the proposi-
tions.

That they have a strict right or pro-
perty to any one of these propositions
a strange assertion, every one of them
being against the Lawes now in force.
Have the two Houses a strict right and
property to lay upon the people what
taxes they shall judge meet? To par-
don all Treasons, &c. that is one of
their propositions. Have they a strict
right and property to pardon them-
selves? and so for all the rest of their
propositions.

These propositions have been Voted
by both Houses, the Kings assent (they
being drawn into Bills) makes them
Acts of Parliament; Hath the King

G

no

12 H. 7. no right to assent or dis-assent? W
 20. 1 Jac. the sending but a Complement? A
 c. 1. 1. Car. our Law-books and Statutes spe
 c. 7. otherwise. This Gent. and othe
 must give an account one time
 other for such delusions put upon t
 people.

AD. 4.

The Gent. saith, *They affirme not
 that the Kings power is separated from
 his person, so as the two Spencers
 affirmed, &c.* His Majesties person
 now at Holby under their guard
 have they not severed his power from
 him, when by no power they have left
 him, he can have two of his Chaplains
 who have not taken their Covenant,
 attend him for the exercise of his con-
 science?

15. Ed. 2. For the three conclusions of t
 Exilium *Spencers*, do not the two Houses
 Hugonis every of them? They say, his Ma
 Calvins ty hath broken his Trust, touching
 case I E. c. the Government of his people: Th
 2. 7. pars have raised Armies to take him, th
 reports, II. have taken him and imprisoned him
 they governe themselves: they make
 Lawes, impose Taxes, make Iudges
 Sheriffes, and take upon them *omnia
 insignia summe potestatis*: Is not this
 remove the King for misdemeanours

to reforme *per asperit*, to govern in aid
 of him; the three conclusions of the
penitents? Doe they think the good
 people of *England* are become stupid,
 and will not at length see these things?

The Gentleman saith, *They doe not* Plowd. 4.
separate his power from his Person, but Eliz. 213.
distinguish it, &c. His power is in his the Kings
 all Writs, Courts, and Officers: Power &
 when they counterfeit the Great Seal, his person
 and seale Writs with the same, make are indivi-
 dibles themselves, Courts and Offi- sible.
 cers by their own Ordinances against
 his consent, declared under his true
 Great Seale of *England* (not by word
 of mouth, letters, or ministers only,)
 their Seal is obeyed, their own Writs,
 their own Iudges, their own Courts,
 their own Officers, and not the Kings:
 the time will come when such strange
 actions & discourses will be lamented.

A D. 5.

The Gentleman goes on, *wee take*
all from the King all power of pardo-
ning Delinquents, wee only say it is not
proper to him quarto modo, &c. What
 doe you meane by *quarto modo*? I am
 sure, *Omnis Rex Angliæ, solus Rex &*
Imper Rex, can doe it, and none else;
 had the books of the Law to this
 purpose, collected by that reverend

Stanford. and learned Iudge *Stanford*, from all
 pleas 99. Antiquity to his time, who died in the
 27. H. 8. c. last year of King *Philip* and Queen
 24. Dier. *Maries* Reign, you shall find this
 163. truth undeniable; and this power was
 never questioned in any Age in any
 Book by any untill this time, that eve-
 ry thing is put to the question. You
 Gentlemen, who professe the Law, and
 maintain the party against the King
 returne at length, and bring not so
 much scandall upon the Law (which
 preserves all) by publishing such in-
 credible things.

We hold only what Law holds: the
 Bract. lib. 3 Kings Prerogative and the Subjects Li-
 cap. 14. fol. berty are determined, & bounded, and
 132. 1. pars admeasured by a written Law where
 Instit. pag. they are; we do not hold the King
 344. Plow have any more power, neither doth he
 3. Eliz. Majesty claim any other but what the
 236. 237. Law gives him; the two Houses be-
 the Law of this Land, have no colour
 of power, either to make Delinquents
 or pardon Delinquents, the King con-
 tradicting; and the Army under Sir
Thomas Fairfax (howbeit but Soule-
 ders) doe now understand that to
 Law, and doe now evidently see, and
 assuredly know, that it is not an Or-
 nance of the two Houses, but an act
 Parliament, made by the King, Lords

and Commons that will secure them; and let this Army remember their executed fellow-Souldier, and the Law was alwayes so taken by all men untill these troubles, that have begot Monsters of opinions.

A D. 6.

This Gentleman sayes, *The Parliament hath declared the King to be in no condition to governe, &c.*

There is no end of your distinctions; I and you professe the Law; shew me Law for your distinctions, or letter, syllable, or line, in any Age in the books of the Law, that the King may in one time be in no condition to govern and yet have the habit of governing, and another time he may (*viz.*) when the two Houses will suffer him; the Law saith thus, *Vox lex non distinguit, non est distinguendum.*

He sayes, *The King is not barred from returning to His Parliament,* (as hee calls the two Houses) hee knows the contrary, the whole City knows the contrary, *Nos juris consulti sumus sacerdotes*, (as *Justinian* the Emperour hath it, in the first book of his *Institutions*) and therefore knowledge and truth should come from our lips: Worthy and ingenuous men

will remember, and reflect upon the passage of that good and wise man Seneca, *Non qua itur, sed qua eundem* follow not the wayes of the Lawyer of the House of Commons: God forgive them, I am sure the King will, they be wise and seek it in time.

A D. 7.

9. Eliz. ch.
1. Caw-
dreys case
c. pars,
fol. 1.

The Gent. sayes, *We swear that the King is our supreme Governour over all persons and in all causes, &c.* Why hath he left out the word (*only*) for the Oath the Members now take, is that King Charles is now the only and Supreme Governour in all causes, over all persons, and yet they keep the only Supreme Governour now in prison, and act now in Parliament by virtue of their Prisoners Writ, and by a concurrent power in this Parliament, and by their own strict right and property (as the Gentleman affirms in his Answer.) These things agree well with their Oath, that the King is the only Supreme Governour in all causes over all persons. This Oath taken now in the Parliament time by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments otherwise they have no power, no

This Oath
is allowed
by the
common-
Law of
the Land.

our to meddle with the publick Affairs.

This Oath being taken in Parliament, that the King is *the only and Supreme Governour in all causes*, then it follows in Parliament causes, over all persons, then over the two Houses. Let them keep this Oath, and we shall be free of peace in the Land, and good lawyers ought to desire peace both for the publick good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *wee do not swear that the King is above all Law nor above the safety of his people* : neither do we swear, but his Majesty and we will swear to the contrary, and have borne and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people : the Law and the safety of his people are his safety, his Honour and his Strength.

A. D. 8.

The Gent. concludes, *The Acts of Parliament are not formally binding nor compleat without the Kings assent, yet the Houses have a virtuall power with-*

out the Kings particular assent, to things in order to publique justice, safety (viz.) In setting up the Excise in raising and maintaining of Armies in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book selling the Church Lands, &c. all these are in order to the publick justice Safety.

3 pars. inst.
pag. 36.

M. H. P. you are of my profession; I beseech you, for the good of your Countrey, for the honour of Science, perswade your self and others as much as in you lies, to believe, follow the monition and counsel that memorable, reverend, and profoundly Learned in the Lawes and Customes of the Land, the Learned COOPER, who writes as becometh a great and a learned Judge of Law (a person much magnified by the two Houses) in these words Peruse over all Books, Records and Histories, and you shall finde a Principle in Law, Rule in Reason, and a Truth in Experience, that Treason doth ever produce fatall and

all destruction to the offender;
 and never attaines to the desi-
 red end (two incidents insepara-
 ble thereunto) & therefore let all
 men abandon it as the poyso-
 nous bait of the devill and follow
 the Precept in Holy Scripture:
**SERVE GOD, HONOUR
 THE KING, AND
 HAVE NO COMPANY
 WITH THE SEDITI-
 OUS.**

Conclusion.

*I say againe, that without an Act of
 oblivion, a gracious generall pardon from
 his Majesties, the Arrears of the Soul-
 ders paid, a favourable regard had to
 tender Consciences, there will be neither
 truth nor Peace in this Land, nor any
 man secure of any thing he hath.*

**By me David Jenkins Prisoner
 in the Tower.**



A
DISCOURS
TOUCHING

*The Inconveniencies of a Long
continued*

PARLIAMENT.

A Perpetuall Parliament is
pugnant to the Act ma
this Parliament for a Tri
nial Parliament; for how
every three years a Parl
ment begin, if this be perpetual, whi
may be so if the two Houses please

2. An adjournment of the Parl
ment makes no Session, 4 *pars in*
tut. fol. 27. Howbeit, before t
adjournment, the King gives h
Royall assent to some Bills. Co
Ibid.

3. There is no Session till a Pr
rogation

ation or dissolution of the Parli-
ment.

4. This Parliament, as appears by
the Act of not dissolving thereof, set
downe in the printed Statutes of this
Parliament, fol. 138. cannot be pro-
posed or dissolved, but by Act of Par-
liament. There hath been as yet no
Act of Parliament in that behalfe:
and therefore all the Acts of this
Parliament, are Acts of one Ses-
sion.

*Plowd.
com. 33.8.
Bro. relati-
on 35. Bro.
Parl. 86.
Dier. 1.
Matix 8.*

5. All Acts of one Session relate
to the first day of the Parliament;
and all the Acts of such a Parliament
are Acts of one day: so the Act for
the Trienniall and the Act for this
Perpetuall, are two Acts of one day
by the Law.

6. 4 Ed 3. cap. 36. Ed. 3. cap 10.
A Parliament is to be holden once e-
very yeare, and more often if need
shall bee; these Acts are confirmed by
the Act for the Trienniall Parli-
ament. How doth a perpetuall Parli-
ament agree with a Parliament once
every yeare, or with the intention
of those Lawes? How doth a Parlia-
ment every three yeares agree with a
Parliament for ever, which may be if
the two Houses please?

7. The result is this; at one day in
Law

Now this Parliament two Acts have passed (for howbeit the one was in 17 Carol. and the other in 17 Carol. yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the sitting of this Parliament: The other this Parliament shall sit for ever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

1. pars. When an Act of Parliament is a
Doct. Bon. gainst common Right or Reason, e
hams case repugnant, or impossible to be perform
fo. 113. 8. E med, the Common Law shall control
3. 3. 30. 33. it, and adjudg this Act to be void; the
E. cassavit. are the words of the Law.

32. An Act of Parliament, that a man
27. H. G. shall be iudg in his own Cause, is a void
Annuity 41. Act. *Hobart* Fol. 110.

3. Eliz. Di- Begin with Common Right. It is
ci. 113. against Common Right, that indebted
men should not pay their debts;
That if any Member of the House of
Commons doe any Subject wrong by
disseising him of his land, or dispos-
sessing him of his goods, or blasting
of his fame, or doing violence to his
person, that such persons during their
lives should not be questioned by a
priviledge of Parliament, and that
extended also to many other beside
them.

themselves; common right doth abhor
 these Enormities, which a perpetuall
 Parliament doth beget, besides the ut-
 ter destruction of all mens actions, real,
 personall, or mixt, who have to do
 with Parliament-men, by the statute of
 limitation, which confines Suites to
 certain years. 21. Jac. c.
 16.

For Common Reason. Parliaments
 were ordained for remedies to redresse
 publique grievances; it is against rea-
 son they should make publique and in-
 sufferable Grievances. The Law of
 the Land allowes no protection for a-
 ny man imployed in the service of the
 Kingdom, but for a yeare to be free
 from Suites, and in many Suites none
 at all, howbeit he be in such service; 39. H. 6.
 But a Parliament perpetuall may
 give a protection, not for a yeare,
 but for ever, which is against all
 manner of reason.

For impossibility. The death of his
 Majesty (whose life God prolong)
 dissolves it necessarily; for the Writ of
 Summons is, *Carolus Rex in hoc in-*
dividuo, and *Carolus Rex* is in this
 particular, *habiturus colloquium &*
tractatum cum praelatis & proceribus,
 &c. King Charles being to have con-
 ference and Treaty with his prelates
 and peeres; *Carolus Rex* cannot have
colloquium

2 H. 5.
Gook title
Parl. 3.
pars.

colloquium et tractatum, Conference and Treaty when he is deceased, and therefore it is as impossible for an Parliament to continue as long as they please, as for a Parliament to make a dead man a live.

For repugnancy. That which but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17 *Caroli Regi* which is to continue at pleasure, is in the said act expressed to be to raise credit for money for these three purposes. First, for relief of his Majesties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdom. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the relief of that Army the imminent danger supposed was six yeares agoe, the supply of his Majesty hath been a supply against him; take away the end, the means thereto are to no purpose; take away the cause the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason the Act should end, the Law rejects things unprofitable and uselesse.

A perpetuall Parliament (beside
th

Sir Anthony
Maines
case, 5.
pars.
1 H. 4. 6.
Litt. cap.
Vilken.

that it incites men to self-ends, destructive of the publick, of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Borough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Counties will amount above some Subsidies yearely; there are many poore Borough-Towns in each County of this Kingdom, who being to maintaine two Burgeses in Parliament, will be quickly beggered, if the Parliament have no end. For all which reasons it is clear, that such long continuance of Parliaments, will instead of a remedy (which is and ought to be the proper and true end of Parliament) become an insufferable Grievance and Oppression to all the People of the Land.

The Writ of Summons this Parliament is the Basis and Foundation of the Parliament. If the foundation be destroyed, the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium & tractatum cum Prelatis, magnatibus & proceribus super arduis negotiis, concernentibus.* 1. nos, 2. Defensionem regni nostri. 3. defensionem Ecclesie Anglica-

ne. This Parliament hath overthrow
 this foundation in all three part
 1. Nos. The King they have chase
 him away, and imprisoned him; the
 have voted no Prelates, and that
 number of other Lords, about four
 in the City must not come to th
 House, and about fourty more are ou
 of Town; the *colloquium & tractatu*
 are made void thereby. For the Kin
 cannot consult and treat there wit
 men removed from thence. 2. *Defen*
sionem regni nostri, that is gone; the
 have made it their Kingdom, not His
 for they have usurped all his Sove
 raignty. 3. *Defensionem Ecclesie Angli*
cane, that is gone; that *Ecclesia Angli*
cana must be understood necessarily
 that Church that at the test of the Writ
 was *Ecclesia Anglicana*, they have de
 stroyed that too. So now these men
 would be called a Parliament, having
 abated, quashed and made nothing of
 the Writ whereby they were summon
 ed and assembled. If the Writ be made
 void, All the Proceffe is void also; that
 House must needs fall where the Foun
 dation is overthrow. *Sublato funda*
mento opus cadit, the foudation being
 taken away, the work falls, is both a
 Maxime in Law and reason.

For some years past, there is no
 crime

time from treason to trespass, but they
 are guilty of; all Treasons, Felonies,
 robberies, Trespasses are *contra pax-*
em, coronam & dignitatem Regis,
 against the Peace Crown and Dignity
 of the King; as appears by all In-
 dictments in all Ages. *Pax Regis*, the
 Kings peace, *Corona Regis*, the Kings
 crown, *Dignitas Regis*, the Kings dig-
 nity, are all trod under foot, and made
 nothing; *Pax Regis*, the peace of the
 King is become a Warre against the
 King, his Dignity put into prison, and
 the Crown put upon their own heads.

All the Judges of England have re-
 solved, that Noble-men committing
 Treason have forfeited their office and
 Dignity; *their office is to counsell the*
King in time of Peace, to defend him in
time of Warre, and therefore thole men
 against the duty and end of their Dig-
 nity taking not only counsell, but
 Armes also to destroy him, and be-
 ing thereof attaint by due course of
 Law, by a tacit condition annexed to
 the estate of their dignity, have forfeited
 the same; they are the words of the law,
 and therefore they have made them-
 selves incapable to be Members of the
 upper House,

Nevils
 case 7. part
 34. 2. lac.

The Oppressions of the People.

Briberies, Extortions, Monopolies ought to be inquired after by the House of Commons, and complained of to the King and Lords. What have they done?

The House of Commons cannot but the Law commit any man to prison who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique peace, by the priviledge of the whole Body.

They have no power by the Writ which the King issueth to elect and returne Members of that House, so to do. For the Writ for them is onely *ad faciendum & consentiendum*, to those things, whereof his Majesty shall consult and treat with his Prelates and Nobles, & *de communi consilio Regni* shall be there ordained, as appears by the Writ. Here is no separate power given over the Kings people to them, but only *ad faciendum & consentiendum*; and in all times this hath been expounded and restrained to that which concerned their own Members in relation to the publique Service as they are Members of the corporate Body

4 pars inst.
23, 24, 25.

dy of the Parliament, whereof the
ing is the Head.

But that the House of Commons
ve committed any man for Treason,
urder or Felony, or for any offence
at had no relation to a Member of
e House of Commons, as it is a-
inst Law and reason, so no instance
n be given till this Parliament.

All Questions and Tryals, where
tneffe are examined, the Examina-
on is upon Oath by the Law, by
four Books, Statutes, every dayes
actice. Examination without an
Oath is but a loose discourse; there-
ore the House of Commons not
aiming power to give Oath have no
ower to examine any man.

No man shall be imprisoned by the
ing or his Councell, unlesse it be by
ndictment, presentment of his good
and lawfull Neighbours where such
eeds be done, in due manner, or by
Processe made by Writ originall at the
Common Law; this Statute rehearſes
Magna Charta, p. 29. and expounds *Lex*
terra, the Law of the Land there men-
tioned: this Law bindes all men, and
the House of Common (for they say
they are of the Kings Council) in all
points, but only against the disturbers
of the service of the Parliament; and
therefore

19. H. 6. 43.

22. E. 4. 22.

5. H. 4. c. 8.

3. H. 6. 46.

25. E. 3. c.

4. Petition

of Right,

3. Car.

therefore the Imprisonment of sever
persons who are not their Member
for no disturbance to their Membe
is utterly against the Law of the La
and the Franchise of the Freemen
this Realm.

*Cui non licet quod minus, non
quod Majus*; he who may not do w
is lesse, may not do what is great
they cannot commit a man for mur
or Fellony, much lesse for Treason.

No Court can fine and impriso
but a Court of Record; the House
Commons is no Court of Record;
House of the Lords where the King
in person, his Nobles and his Judg
and Couucell at Law, the Masters
the Chancery assisting, is a Court
Record, and that is the Court of P
liament, where the *Colloquium & C
Status* is; The House of Comm
may present Grievances; grant or
grant Aides, consent or not cons
to new Laws; but for fining or imp
soning any but as aforesaid, is but o
late date, and no satient usage: Th
have no journall Book, but sithen
Edw. 6. time 6. Hen. 8, cap. 15. do
not prove the House of Commons
be a Court of Record, it mentio
only to be entred on Records in t
Book of the Clerk of the Parliame

8. pars,

Cook 110

27 H. 6, 8.

21 E. 4. fol.

46.

Members depart into the Coun- Commons
 There is no Journal but sithence in Parlia-
 6. time, and that is a Remem- ment ne
 nce or memoriall, as 12. H. 4. 23. font lud-
 The whole Parliament is one cor- ges.
 ate Body, consisting of the Head
 three Estates: The Court is only
 re were the *Consilium & tractatus*
 where the consult and treaty is with
 King, which is in the House of
 rds only.

The House of Commons claim not
 examine upon Oath any Man; no 14 H. 8. 3.
 36 H. 8.
 ourt can be without a power to give Dier 60.
 Oath; Courts Baron, Court of Pi- & pars. inst.
 wders, County Court, may and doe cap. 1.
 ve Oath; no Court can be without
 power to try, no triall can be without
 ath; and therefore the house of
 ommons not claiming power to give
 a Oath, can bring no matter to tryal,
 and consequently can be no Court.

The behaviour of the Commons at
 Conference with the Lords; the
 Commons are alwayes uncovered, and
 standing, when the Lords sit with their
 hats on, which shewes they are not
 Colleagues in judgment; for fellow-
 judges owe no such reverence to their
 Companions.

When was ever Fine imposed by the 11 H. 4. c.
 House of Commons estreated in the 11.
 Exche-

Exchequer? The ejecting of a Member, who hath sitten, is against the Law; for they cannot remove a man out of the House unduly returned much lesse a man returned duly.

2 H. 4. c. d. By these Lawes it appeares, that
 1 H. 5. c. 1. any undue return be made, the per-
 8 H. 6. c. 7. son returned is to continue a Mem-
 23 H. 6. ber, the Sheriffs punishment is 200
 c. 15. one to the King, another to the party
 that is duly elected, Imprisonment
 for a year without Bail or Mainprise
 and that person who is unduly return-
 ed, shall serve at his own charge, and
 have no benefit at the end of the Par-
 liament by the Writ *De solutione feoda-
 rum Militum, Civium, & burgenfium
 Parliament*. And the tryall of the
 falsity of the return, is to be before the
 Iustices of the Assizes in the proper
 County, or by action of Debt in any
 3 Ed. 4. 20. Court of Record. This condemns
 5 Ed. 4. 41. the Committee for undue Elections
 which hath been practised but of late
 times; for besides these Lawes, it is
 against a maxime in the Common-
 Law; an Averment is not receivable
 against the returne of the Sheriffe, for
 his Return is upon Oath, which
 Oath is to bee credited in that Suit
 wherein the Return is made.

The said Statutes condemne and
 make

make those Members no Members, which were not resident in the County and Boroughs, for which they were elected, at the time of the teste of the Writ of the summons of the Parliament, and any abusive practice of the times to the contrary is against the Law, and ought not to be allowed.

Assault upon Parliament-men.

If a Parliament-man, or his Menial Servant be assaulted, beaten, or wounded, in the Parliament time, a proclamation shall be made where the deed is done, that the Offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, & the offence there be tryed; for Default of appearance the Offender is declared, attainted of the Misdeed, and it is accorded that hereafter it be done likewise in the like case.

5 H.4.c.6.

11. H.6.c.

11.

Serving of proceſſe upon a Lord of Bogo de the Parliament punished in the Clare 11. Lords House.

E.3.4.pars

Serving of proceſſe upon *Thornsby* inst.fol.24. required of in the *Chancery*, and there 10. *Thornsby* Offenders were convicted.

byes case.

The premises prove, that breaches Clerk of priviledge of Parliament may be the Parl. punished *ibid*, 10.E.3

punished elsewhere then in Parliament

Vpon all this Discourse, it is easie to decerne what fruits may be expected from this Parliament, continuing as long as the two Houses please, and that there is no safety for this Common-Wealth, but by the observation of their ancient Franchises, customes and Lawes.

Conclusion.

ISay againe; that without an Act of Oblivion, a gracious generall pardon from His Majesty, the Arreares of the Souldiers paid, a favourable regard had to tender consciences, there will be neither Truth nor Peace in this Land nor any man secure of any thing he hath.

AN



